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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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AUG 24 1992

Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
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To: The Commission

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COMMENTS OF SINCLAIR BROADCAST GROUP, INC.

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Dated: August 24, 1992

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SUMMARY

Sinclair Broadcast Group, Inc. hereby comments on the Commission's Notice of Proposed Rulemaking regarding the Commission's television ownership rules. Specifically, Sinclair believes that the Commission should relax its duopoly rule to allow co-ownership of UHF stations in a market regardless of contour overlap. This action will promote achievement of the long sought "level playing field" between VHF and UHF stations while encouraging improved public interest programming by economically fragile UHF stations. Sinclair also believes that the Commission should encourage time brokerage agreements in order to preserve a source of television programming and revenue that is vital to maintaining maximum diversity in local communities across the country. These actions are important for creating a regulatory framework for the future that will promote growth in the television industry and increased program quality and diversity for the public.

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COMMENTS OF SINCLAIR BROADCAST GROUP, INC.

Sinclair Broadcast Group, Inc. ("Sinclair") hereby submits its comments on the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding. Sinclair's comments are directed specifically at two of the matters raised in the NPRM, namely, the duopoly rule and the treatment of time brokerage agreements. Sinclair believes that an increasingly competitive video marketplace and the financial difficulties in maintaining and operating UHF television stations require relaxation of the duopoly rule as to UHF stations. Sinclair also believes that the Commission should recognize time brokerage agreements as an important method of protecting and promoting broadcast diversity that should be encouraged rather than restricted.

I. THE TELEVISION DUOPOLY RULE SHOULD BE RELAXED TO ALLOW UHF DUOPOLIES

1. In its NPRM, the Commission requested comment on whether the duopoly rule should be relaxed and to what degree.[1/]

1/ NPRM at 8-11.

Sinclair maintains that the increased availability of video services has reduced the need for the television duopoly rule with respect to UHF stations. However, as is explained below, complete elimination of the duopoly rule would be harmful to competition and diversity in many markets.

2. It is well established that VHF stations have a decided advantage over UHF stations in terms of audience coverage, operating expenses, and network affiliations. Sinclair recently examined Nielsen audience data from February 1992 covering 45 of the top 50 television markets and found that the average daily share of the VHF affiliates in those markets was 19.7%, while the average daily share of UHF independent stations was 6.4%.[2] This dramatic difference cannot be attributed merely to the absence of a network affiliation, as a similar analysis of the handful of VHF independent stations in the top fifty markets revealed an average audience share of 11.8%, almost double that of UHF independents.

3. Partially as a result of their smaller audiences, UHF independents are in a far different economic position than their

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2/ In making these calculations, Sinclair utilized audience data for only those UHF stations operating with a traditional independent format, and therefore did not examine data from specialized stations that air primarily religious, foreign language, or home shopping programming. Because these programming formats consistently garner lower ratings than traditional independent programming, their inclusion would have made the differences in VHF and UHF audience share even more dramatic. Sinclair did not include five of the top 50 markets in its analysis because either audience data was not available or the markets did not have any UHF stations airing a traditional independent format.

VHF competitors. According to the annual NAB/BCFM Television Financial Reports, the pre-tax income of network affiliates regularly exceeds that of UHF independents by a substantial margin.

Network Affiliates, 1989

Mkts. 1-10, average pre-tax income = $32.8 million.
Mkts. 11-20, average pre-tax income = $9.0 million.
Mkts. 21-30, average pre-tax income = $6.8 million.
Mkts. 31-40, average pre-tax income = $1.2 million.
Mkts. 41-50, average pre-tax income = $2.1 million.

UHF Independents, 1989

Mkts. 1-10, average pre-tax income = $670,000.
Mkts. 11-25, average pre-tax income = ($3.2 million) (neg).
Mkts. 26-50, average pre-tax income = ($1.2 million) (neg).

Network Affiliates, 1990

Mkts. 1-10, average pre-tax income = $33.4 million.
Mkts. 11-20, average pre-tax income = $9.6 million.
Mkts. 21-30, average pre-tax income = $7.3 million.
Mkts. 31-40, average pre-tax income = $2.1 million.
Mkts. 41-50, average pre-tax income = $1.7 million.

UHF Independents, 1990

Mkts. 1-10, average pre-tax income = $978,000.
Mkts. 11-25, average pre-tax income = ($2.6 million) (neg).
Mkts. 26-50, average pre-tax income = ($850,000) (neg).

Network Affiliates, 1991

Mkts. 1-10, average pre-tax income = $27.3 million.
Mkts. 11-20, average pre-tax income = $5.0 million.
Mkts. 21-30, average pre-tax income = $5.0 million.
Mkts. 31-40, average pre-tax income = $1.8 million.
Mkts. 41-50, average pre-tax income = $1.3 million.

UHF Independents, 1991

Mkts. 1-10, average pre-tax income = $679,000.
Mkts. 11-25, average pre-tax income = ($1.4 million) (neg).
Mkts. 26-50, average pre-tax income = ($744,000) (neg).

4. The Commission has long recognized this and other inherent obstacles to UHF competitiveness, noting in its NPRM that UHF facilities are

> often handicapped by less favorable signal propagation characteristics and higher technical operating costs than VHF stations and [] tend to be less profitable than their VHF competitors. Moreover, these stations are generally newer and not affiliated with one of the national broadcast networks.

NPRM at 11. These conditions make the continued existence of many UHF stations a tenuous proposition, and without revision of the television ownership rules to help reduce the competitive gap between UHF and VHF stations, mounting UHF losses may eventually drive UHF stations either out of business or into the arms of wealthy VHF station owners.

5. Because of the extreme inequality between VHF and UHF stations technically and financially, simple elimination of the duopoly rule would likely result in VHF stations using their resources to acquire local UHF stations, thereby allowing the VHF stations to augment their already extensive coverage of a market. The immediate result would be expansion of already dominant local voices and the loss of a number of independent voices without any countervailing public benefit. The eventual result would be the loss of the remaining UHF independents, as the presently existing competitive imbalance that threatens their existence would be magnified significantly by VHF stations with co-owned local VHF and UHF "satellite" stations. As the big stations get bigger, it is inevitable that the small stations will get smaller. Under

such circumstances, it is unlikely that any increases in public service programming by newly-formed VHF-led station combinations would outweigh the loss of the diverse public service programming that was carried on the previously independent UHF stations.

6. It is possible, however, to achieve the Commission's laudable goal of providing economies of scale to those stations most in need of the savings, while actually promoting competition and diversity. By modifying the duopoly rule to allow co-ownership of UHF stations in the same market, the Commission could provide these stations with their first real opportunity to ease the effects of the technical inferiority which has prevented them from competing on a level playing field with the established VHF affiliates for several decades.

7. Allowing co-ownership of UHF stations without regard to contour overlap would improve the market coverage of a UHF licensee while reducing costs through the use of shared facilities and personnel. In light of the dismal financial figures cited above for UHF independents, it is clear that such savings are essential for keeping some UHF stations on the air, and critical to the efforts of the remaining UHF stations to improve their entertainment and public service programming. These improvements, along with better market coverage, would finally allow UHF stations to compete fairly with VHF stations. The increased competition would benefit the public not only because of the improved public service programming which UHF partnerships could create, but because the increased competition

would hopefully drive VHF stations to improve their programming as well.[3/]

8. An additional public benefit resulting from a change in the duopoly rule would derive from the fact that there are a number of outstanding UHF construction permits around the country that will never be built because of the current economics of broadcast competition. If it became possible through relaxation of the duopoly rule for local UHF stations to purchase and activate these stations because of the savings of local cost-sharing, the number of operating stations in various markets around the country would be increased. As a result, relaxation of the duopoly rule as to UHF stations would not only increase the availability of public service programming, but could also increase the availability of television broadcast service in general and provide greater competition to other video services such as cable and MDS.

9. Sinclair reemphasizes, however, that the achievement of more competitive television broadcast markets hinges on improving, through co-ownership, the capabilities and economics of UHF stations as against VHF stations. If VHF stations were also allowed to combine with other television stations (either VHF or UHF), the competitive imbalance between VHF and UHF

3/ If, as the Commission posits in its NPRM at 11, the UHF/VHF distinction is eliminated by the movement of all television stations to a single frequency band as part of the transition to ATV technology, the duopoly rule could then be modified to allow duopoly ownership of television stations without regard to channel position.

stations would be exacerbated rather than alleviated. At any rate, VHF co-ownership is unnecessary, as VHF affiliates have repeatedly demonstrated that their audience coverage is sufficient to generate the economies of scale necessary to both thrive and provide public service programming. Allowing them to use their resources to expand those economies at the expense of UHF competitors is unwise, and will injure rather than promote the availability of diverse public service programming.

II. THE COMMISSION SHOULD NOT RESTRICT THE USE OF TIME BROKERAGE AGREEMENTS

10. Although the Commission questioned in its NPRM whether time brokerage agreements were significantly utilized by television licensees, it is safe to say that the American television industry was built on such agreements, although they have generally been referred to as network affiliation agreements. The benefits to the public of network affiliation have been long recognized by the Commission, which has noted the increased program quality and diversity generated by such arrangements.[4/] Similarly, it has long been common for major syndicators to own one station in a market while feeding programming to other stations in the market in their capacity as syndicators. The Commission has never seriously questioned the benefits to the

4/ See Report on Chain Broadcasting and Order in Docket No. 5060, at 4, 47-48 (May 2, 1941), aff'd sub nom. National Broadcasting Co. v. United States, 319 U.S. 190 (1943); Elimination or Modification of Section 73.658(c) of the Commission's Rules, 4 FCC Rcd 2755, 2757 (1989).

public of such arrangements, and it makes little sense to treat time brokerage differently merely because the program supplier in a time brokerage arrangement is typically not a large corporate program producer. Whether a licensee's programming arrangement is with a formally structured "network" and is called a network affiliation agreement, or it is with a less structured program supplier and is called a time brokerage agreement, the public benefits of the arrangement are identical.

11. Because of the differences between television and radio, television time brokerage/network affiliation agreements serve a fundamentally different purpose than radio time brokerage agreements. As a result, television time brokerage agreements deserve far less restrictive treatment than is presently accorded radio time brokerage agreements.

12. The most important distinction between television and radio for purposes of examining the benefits of time brokerage is the much greater cost of television facilities and television programming. Because television programming is costly to produce, it is not financially feasible for stations to self-produce more than a small portion of their daily programming. The rest of their programming must come from networks, syndicators, and other large program suppliers capable of spreading the substantial cost of program production and distribution across multiple television stations.[5/] Indeed, a significant

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5/ While radio programming continues to be largely locally produced, television programming by its nature is produced (continued...)

premise of the Commission's proposal in this rulemaking to increase the number of television stations a single entity can own is the belief that large group owners will offer better programming because of their ability to spread the costs of production across many stations.[6/]

13. While there is general agreement that access to large audiences through multiple television stations is essential to the production of high quality programming, buying multiple television stations is not practical for most small licensees and local program producers, as they typically lack the immense amount of capital necessary to make such a purchase. As a result, these entities must either surrender their hope of producing television programming, or find a cost-effective way to reach audiences sufficiently large to finance the cost of program production. Given these parameters, time brokerage agreements provide an extremely practical way for television stations and program producers to reach sufficiently large audiences to finance program production. Thus, time brokerage allows existing licensees to spread the cost of program purchase and production over additional stations, thereby allowing them to bring

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5/(...continued) mostly by third parties. Television time brokerage agreements therefore do not raise the diversity concerns that radio time brokerage agreements do. Whether television programming comes from a network, a syndicator, or a time broker is irrelevant in determining whether it promotes diversity and serves the public interest.

6/ See NPRM at 7.

programming that they otherwise could not have acquired or produced to a broader public audience.

14. Similarly, local program producers that cannot afford to purchase a television station to air their programming can utilize time brokerage agreements to bring their programming to the public and create the revenue necessary for the creation of additional programming. Being able to air such programming is not only beneficial to the program producer and the public, but provides television stations with an additional source of programming that is cost effective. The income from time brokerage arrangements can provide a mechanism for augmenting the income of financially struggling television stations so that they can continue to serve the public. This is particularly important for UHF stations, as they often lack a network affiliation and must struggle to find cost-effective programming.[7/]

15. In sum, time brokerage provides a conduit to large audiences for talented producers, particularly minorities, who are unable to obtain the capital necessary to purchase television stations or establish a syndication business. Time brokerage

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7/ In Pittsburgh, for example, a minority licensee acquired WPTT(TV) and converted the station to a 24-hour Home Shopping Network affiliate. Within several weeks, major cable companies in the area terminated carriage of WPTT(TV), greatly limiting its ability to reach the local audience. The licensee approached Sinclair (the former owner of WPTT(TV)) for assistance, and a local marketing agreement was reached whereby Sinclair provides WPTT(TV) with programming from 3 p.m. to midnight. Because of this arrangement, the local cable companies resumed carrying WPTT(TV), thereby giving the station an opportunity to compete, and promoting minority ownership and diversity in the Pittsburgh market.

therefore provides an opportunity to these individuals to contribute to the diversity of television programming available to the public.[8/] Sinclair believes that the Commission should continue to allow television licensees to participate in time brokerage agreements so long as it is clear that the licensee continues to maintain control over its facilities. This should alleviate any concerns of the Commission over compliance with its ownership rules, while allowing the public to receive the tremendous benefits created by such agreements.

CONCLUSION

As they struggle to endure in an increasingly competitive video market, broadcast television stations, and particularly UHF stations, must be given the regulatory latitude to adapt to changing competitive conditions. By allowing local co-ownership of UHF stations, the Commission will promote the achievement of a long sought "level playing field" between VHF and UHF stations while encouraging improved public interest programming by traditionally fragile UHF stations. In allowing continued use of time brokerage agreements by television licensees, the Commission will preserve a source of television programming and revenue that is vital to maintaining maximum diversity in local communities across the country. Sinclair believes that both of these actions are important for creating a regulatory framework for the future

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8/ See Petition for Issuance of Policy Statement or Notice of Inquiry on Part-Time Programming, 82 F.C.C.2d 107 (1980).

that will promote growth in the television industry and increased program quality and diversity for the public.

Respectfully submitted,

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Dated: August 24, 1992